

Attachment 9

Wisconsin Child Abuse Neglect Act

48.981 Abused or neglected children. (1) DEFINITIONS.

In this section:

(a) “Abuse” means any of the following:

1. Physical injury inflicted on a child by other than accidental means.
2. Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.
3. A violation of s. 948.05.
4. Permitting, allowing or encouraging a child to violate s. 944.30.
5. Emotional damage.
6. A violation of s. 948.055.

(am) “Caregiver” means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child’s parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother or half sister.
2. The child’s guardian.
3. The child’s legal custodian.
4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.
5. An employee of a residential facility or child caring institution in which the child was or is placed.
6. A person who provides or has provided care for the child in or outside of the child’s home.
7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.
8. Any relative of the child other than a relative specified in subd. 1.

(b) “Child” means any person under 18 years of age.

(cm) “Emotional damage” means harm to a child’s psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, and for which the child’s parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. “Emotional damage” may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.

(cs) “Indian child” means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(d) “Neglect” means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(e) “Physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14).

(f) “Record” means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) “Relative” means a parent, grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, halfbrother, halfsister, brother-in-law, sister-in-law, stepuncle or steppaunt.

(g) “Reporter” means a person who reports suspected abuse or neglect or belief that abuse or neglect will occur under this section.

(h) “Subject” means a person named in a report or record as either of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.
2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child.

(i) “Tribal agent” means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) **PERSONS REQUIRED TO REPORT.** A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, school teacher, administrator or counselor, mediator under s. 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, speech-language pathologist, audiologist, emergency medical technician or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3). Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

NOTE: Sub. (2) is amended eff. 7-1-95 by 1993 Wis. Act 443 to read:

(2) **PERSONS REQUIRED TO REPORT.** A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, school teacher, administrator or counselor, mediator under s. 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, , member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, dietician, speech-language pathologist, audiologist, emergency medical technician or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as

provided in sub. (3). Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may make such a report. No person making a report under this subsection may be discharged from employment for so doing.

(2m) EXCEPTION TO REPORTING REQUIREMENT. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined under sub. (1) (a) 2., sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) REPORTS; INVESTIGATION. (a) *Referral of report.* A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or the sheriff or city, village or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county department all cases reported to it. The county department may require that a subsequent report be made in writing. Each county department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting under this section may request an immediate investigation

by the sheriff or police department if the person has reason to suspect that a child's health or safety is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the child's health or safety is in immediate danger and take any necessary action to protect the child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (d) 5. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

3. If the police or other law enforcement officials determine that criminal action is necessary, they shall refer the case to the district attorney for criminal prosecution.

(bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Winnebago tribe, if a county department which receives a report under par. (a) pertaining to a child knows that he or she is an Indian child who resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child and the fact that a report has been received about that child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated or the child is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Winnebago service area where the child resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Winnebago service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the county department or licensed child welfare agency under contract with the county department shall, in accordance with the authority granted to the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations. If the investigation is of a report of abuse or neglect or threatened abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the investigation is of a report of abuse or neglect or threatened abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the county department or licensed child welfare agency involved to the child's parents, guardian or legal custodian. The county department or licensed child welfare agency under contract with the county department may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the

child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an employee of the county department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

3. If the county department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services, the county department shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian refuses to accept the services, the county department may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services.

4. The county department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department shall give due regard to the culture of the subjects and shall establish that the person alleged to be responsible for the emotional damage is unwilling to remedy the harm. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The county department and licensed child welfare agency under contract with the county department shall maintain a record of its action in connection with each report it receives. The record shall include a description of the services provided to any child welfare agency under contract with the county department shall update the record every 6 months until the case is closed.

6. The county department or licensed child welfare agency under contract with the county department shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child who is the subject of the report.

7. The county department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human service agencies to prevent, identify and treat child abuse and neglect. The county department shall coordinate the development and provision of services to abused and neglected children and to families where abuse or neglect has occurred or to children and families where circumstances justify a belief that abuse or neglect will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that it receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation it or a licensed child welfare agency under contract with the county department conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect, and for planning and policy development.

9. The county agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) *Contract with licensed child welfare agencies.* A county department may contract with a licensed child welfare agency to fulfill its duties specified under par. (c) 1., 2. b., 5., 6. and 8. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department contracts.

(d) *Independent investigation.* 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county department under s. 46.215 or 46.22.

2. If an agent or employee of a county department of licensed child welfare agency under contract with the county department required to investigate under this subsection is the subject of a report, or if the county department or licensed child welfare agency under contract with the county department determines that, because of the relationship between the county department or licensed child welfare agency under contract with the county department and the subject of a report, there is a substantial probability that the county department or licensed child welfare agency under contract with the county department would not conduct an unbiased investigation, the county department or licensed child welfare agency under contract with the county department shall, after taking any action necessary to protect the child, notify the department. Upon receipt of the notice, the department or a county department or child welfare agency designated by the department shall conduct an independent investigation. If the department designates a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate that agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child.

(5) **CORONER'S REPORT.** Any person or official required to report cases of suspected child abuse or neglect who has reason

able cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney, the department, the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) **PENALTY.** Whoever intentionally violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) **CONFIDENTIALITY.** (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by the department, county departments or licensed child welfare agencies under contract with the county departments and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

2. Appropriate staff of the department, a county department or licensed child welfare agency under contract with the county departments, or a tribal social services department.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian, or legal custodian, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child under contract with or under the supervision of the county department under s. 46.215 or 46.22.

6. A multidisciplinary child abuse and neglect team recognized by the county department.

6m. A person employed by a child advocacy center recognized by the county board or the county department, to the extent necessary to perform the services for which the center is recognized by the county board or the county department.

7. Another county department, or licensed child welfare agency under contract with that county department, or a tribal social services department that is currently investigating a report of suspected or threatened child abuse or neglect involving a subject of the record or report.

8. A law enforcement officer or agency for purposes of investigation or prosecution.

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings related to a petition under s. 48.13 or a court conducting dispositional proceedings under subch. VI in which abuse or neglect of the child who is the subject of the report or record is an issue.

10g. A court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issuer is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of a child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10. or 10g.

11m. An attorney representing the interests of an Indian tribe or band or of an Indian child in proceedings under subd. 10m. or 10r.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department or licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 18.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

(am) notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) A county agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(d) The department may have access to any report or record maintained by a county department or licensed child welfare agency under contract with a county department under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(8) **EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION.** (a) The department and county departments to the extent feasible shall conduct continuing education and training programs for staff of the department, county departments and tribal social service departments, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect, to encourage self-reporting and voluntary acceptance of services and to improve communication,

cooperation and coordination in the identification, prevention and treatment of child abuse and neglect. The department and county departments shall develop public information programs about child abuse and neglect.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases. These procedures and capabilities may include, but are not limited to, receipt, investigation, and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department or a county department may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department or county department shall give priority to parental organizations combating child abuse and neglect.

(d) 1. Each county department or licensed child welfare agency under contract with a county department staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect protective services approved by the department. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and county department or licensed child welfare agency under contract with a county department staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06 (1) (am) 3 and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs. The report shall include a full statistical analysis of the child abuse and neglect reports made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each county department described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 W (2d) R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491.

See note to Art. I, sec. 11, citing *State v. Boggess*, 115 W (2d) 443, 340 NW (2d) 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. *State v. Hurd*, 135 NW (2d) 266, 400 NW (2d) 42 (Ct. App. 1986).

Duty to report suspected cases of child abuse or neglect under 48.981 (3) (a) prevails over any inconsistent terms in 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving sixteen and seventeen year old children does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professional may report suspected child abuse under the permissive provisions of (2) when abuser, rather than victim, is seen in the course of professional duties. 51.30 doesn't bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section is discussed. 76 Atty. Gen. 286.

Disclosure under (7) (a) 1 and (c) is mandatory. 77 Atty. Gen. 84.

Discussion of responsibility of county departments of social services to investigate allegations of child abuse and neglect. Department staff members may interview child on public school property, and may exclude school personnel from the interview. School personnel cannot condition on-site interviews on notification of child's parents. 79 Atty. Gen. 48.

See note to 46.22 citing 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s.48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. OAG 10-93.

See note to Art. I, sec. 3, citing *New York v. Ferber*, 458 US 747 (1982).

See note to Art. I, sec. 7, citing *Pennsylvania v. Ritchie*, 480 US 39 (1987).